IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1176 of 2004

In

SPECIAL CIVIL APPLICATION No. 5633 of 2004

in

LETTERS PATENT APPEAL No. 1176 of 2004

WITH

CIVIL APPLICATION No.4431 of 2004

in

LETTERS PATENT APPEAL No.1176 of 2004

Approval and Signature:

THE HON'BLE **MR.JUSTICE R.S.GARG**

THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GANDHIDHAM SPINNING & MANUFACTURING CO. LTD. - Petitioner(s)

Versus

PUNJABHAI MURJIBHAI & 31 - Respondent(s)

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Appearance :

MR DC DAVE for Petitioner No(s).: 1.

MR PRABHAKAR UPADYAY for Respondent No(s).: 1, 2, 3, 4,
5, 6, 7, 8, 9, 10, 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 21, 22,
23, 24, 25, 26, 27, 28, 29,30.
- for Respondent No(s).: 0.

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CORAM :HONOURABLE MR.JUSTICE R.S.GARG

THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 20/06/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The facts in nutshell for disposal of the present appeal are that as many as 167 persons filed a dispute before the Labour Court for settlement of their dues, during pendency of the dispute

barring 29, all others settled the dispute and walked out of the scene. Respondent no.30-Gandhidham Spinning Mill Kamdar Union, a registered trade union even in its representative capacity did not join the dispute to espouse the cause of the labour. After the Labour Court made its award the said 29 dissatisfied labourers filed an appeal. Before the appeal could be disposed of respondent no.30 made an application before the Labour Court that they being registered trade union be allowed to join the proceedings in support of the claim and the cause of the appellant before the appellate tribunal. The application has been allowed, therefore, the establishment came to this Court in Special Civil Application No.5633 of 2004. The Special Civil Application having been dismissed, the establishment is before us in the Letters Patent Appeal.

2. Learned counsel for the appellant submitted that joinder of the Kamdar Union, respondent no.30 should be to the extent of the interest of those 29 appellants and such clarification ought to have been made either by the appellate tribunal or by the learned Single Judge, because otherwise trade union in its capacity as a representative union would enlarge the scope of the dispute and would create confusions and complications in the matter. It is further the submission of the learned counsel for the appellant that as many as 138 persons who walked out of the scene even when the matter was pending consideration before the Labour Court now cannot take any action. If they cannot. the trade union cannot be allowed to go for their cause. The submission is also that if the trade union is allowed to enlarge, enhance or extend the scope of the dispute before the

appellate court then there would be no end to the litigation.

3. Learned counsel for respondent no.30 submitted that respondent no.30 is interested in the cases and cause of the labourers who are members of the trade union and if they are allowed to take part in the proceedings it would extend the benefit to all those who are not parties before the appellate tribunal. It was also submitted that at this stage a clarification is not required and the matter must be left to the discretion of the appellate forum. It was also contended that the present appeal under section 15 of the Letters Patent is not maintainable as the learned Single Judge had disposed of the matter treating the same to be one under Article 227 of the Constitution of India.

4. Learned counsel for the appellant, however, submitted that a perusal of the order passed by the learned Single Judge would show that the matter was brought to the notice of the learned Single Judge under Article 226/ 227 of the Constitution of India and the learned Single Judge had taken the said argument into consideration.

5. So far the question of maintainability of the Letters Patent Appeal is concerned it is to be noted that the learned Single Judge in paras 4 and 5 did record that the present would be essentially a petition under Article 227 of the Constitution of India, but at the same time he observed that the matter would not be maintainable even if the same is taken to be one under Article 226 of the Constitution of India. The learned Single Judge has observed that petition could be allowed only if the subordinate tribunal has acted beyond its jurisdiction or had made some order which is not permissible under the law. In para 7, the learned Single Judge has

observed that no cause could be made out before him for interference by the Court in exercise of its power under Article 226/ 227 of the Constitution of India. From these observations made by the learned Single Judge we must conclude that the matter was examined from both the angles. The learned Single Judge refused to exercise his powers both under Articles 226 and 227 of the Constitution of India. Where the learned Single Judge exercises or refuses to exercise his jurisdiction in a petition filed under Article 226 of the Constitution of India, then Letters Patent Appeal under clause 15 of the Letters Patent would certainly be maintainable. We hold that the present appeal is maintainable.

6. So far as the merits of the matter are concerned, true it is that the learned Tribunal has simply allowed the application filed by the trade union for being joined as party but we are of the opinion that a clarification is required to be made in the matter.

7. The indisputable facts are that as many as 138 persons entered into a compromise with the establishment and withdrew the claim when the matter was pending consideration before the Labour Court. The Labour Court examined the factual aspect, validity of the dispute in relation to 29 persons only. Appeal was filed by 29 persons only. Under our system a person who is not a party before trial court cannot be allowed to be joined as party in proceedings, nor can he be allowed to appeal unless Court grants leave. In the present matter 138 persons who entered into compromise did not make an application, but the trade union says that even if they are satisfied the trade union be allowed to espouse the cause of all such persons. In our considered opinion such a prayer cannot be allowed. If the trade union was interested in the outcome of the

litigation and was really interested in the interest of those 138 persons, then it should have made an application before the Labour Court itself. It is also to be noted that those 128 persons entered into compromise with the establishment and settled their dues with the assistance of respondent no.30. If that be so the respondent no.30 cannot be allowed to raise an issue which they themselves have buried. Let the deeds take rest and have eternal peace. In an appeal filed by 29 persons, the trade union cannot be allowed to enlarge or enhance the scope of the litigation. So far as grant of application made by the trade union for its joinder as co-appellant is concerned we do not propose to interfere in the matter, but we clarify the position as above.

8. The Letters Patent Appeal is disposed of. No order as to costs.

9. No orders on Civil Application No.4431 of 2004. The Civil Application is disposed of accordingly. Notice is discharged. Interim relief is vacated.

(R.S. Garg,J.)

(Ravi R. Tripathi, J.)

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